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Merger Review and Control of Economic Concentrations in Tunisia

Client briefing | Merger Review and Control of Economic Concentrations in Tunisia
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Legal Framework and Policy Objectives

Tunisia's merger control regime is based on a legal framework designed to maintain competitive markets, prevent excessive market concentration, and protect consumer welfare. The system reflects a preventive approach, requiring prior review of transactions that could create or reinforce dominant positions in the national market. The underlying policy objective is to balance economic efficiency and market development with the need to avoid distortions that harm competition or limit consumer choice.

The primary legal instrument is Law n° 2015-36 of 15 September 2015, which reorganized competition and pricing law and repealed the earlier Law n° 91-64 of 29 July 1991. This law modernized Tunisia's competition framework by consolidating rules on anticompetitive practices, abuse of dominance, and economic concentrations. Merger control provisions are principally set out in Articles 5 to 11, while implementing decrees, such as Decree n° 2016-780 of 13 June 2016, specify procedural elements and turnover thresholds for notification.

The institutional structure reflects a distinctive dual model. The Minister in charge of Trade holds primary decision-making authority over merger notifications, while the Competition Council serves an advisory role, providing opinions on potential competitive effects. Though its opinions are non-binding, the Council's analysis carries practical weight in shaping the Minister's assessment. In addition to statutory and regulatory sources, the Council's annual reports and prior opinions serve as key interpretative guidance, though Tunisia has not yet issued formal merger control guidelines.

The law defines an "economic concentration" functionally rather than technically, as any operation that may lead to the creation, modification, or reinforcement of a dominant position in a substantial part of the Tunisian market. This includes mergers between previously independent companies, acquisitions of control through share or asset purchases, and certain joint ventures resulting in lasting market changes. The focus is on the economic effect rather than the legal form of the transaction. Importantly, the regime applies regardless of the parties' nationality, capturing foreign-to-foreign transactions with a local impact.

Notification Thresholds and Mandatory Filing Requirements

Merger notifications are mandatory for concentrations that satisfy at least one of two alternative thresholds. The first is a market share threshold, where the parties collectively hold more than 30 percent of sales, purchases, or other transactions in a relevant product or service market, or a substantial part thereof, within Tunisia. The second is a turnover threshold, triggered when the parties' combined turnover in Tunisia exceeds the level set by regulation. Pursuant to Decree n° 2016-780, the turnover threshold is currently set at 100 million Tunisian Dinars. The thresholds operate on an alternative basis, meaning that meeting either criterion triggers a filing obligation.

Notifications must be submitted to the Minister within fifteen days of executing the transaction, announcing a public bid, or acquiring control, whichever occurs first. This short statutory timeline requires parties to evaluate potential merger control obligations at an early stage, particularly in complex cross-border deals.

The notification package typically includes detailed information on the structure of the transaction, the parties' business activities, turnover data, market shares, relevant competitors, and any previous or anticipated regulatory approvals. The authorities have broad discretion to request additional supporting information, which can extend the effective review period, even if the formal statutory period remains unchanged.

Review Process and Institutional Competence

Once a notification is submitted, the Minister in charge of Trade initiates a review process with a statutory maximum period of three months. During this period, the Minister may refer the file to the Competition Council, which conducts a detailed analysis of the transaction's impact on competition. This analysis typically examines market concentration levels, the position of competitors, potential barriers to entry, market trends, and the likely effects on consumers and other stakeholders.

While the Council's opinions are non-binding, they often include both quantitative assessments, such as changes in market share and concentration indices, and qualitative evaluations of competitive dynamics, including whether efficiencies could offset potential harm. The absence of a formal two-phase review process means that all notifications undergo the same procedural scrutiny, regardless of complexity. However, the Minister can request further information or clarifications, effectively extending the review period. In practice, complex transactions may therefore require careful coordination with authorities to ensure compliance with both formal deadlines and practical expectations.

Substantive Assessment Criteria

Tunisia applies a dominance-based test under Article 7 of the Competition Law. The authorities evaluate whether the concentration is likely to create or reinforce a dominant position that could substantially impede competition in the relevant market. The analysis considers factors such as market shares, the strength of existing competitors, potential barriers to market entry, the level of product differentiation, and the overall structure of the relevant market.

In addition, Article 8 allows authorities to consider economic or technical efficiencies generated by the transaction. This may include cost savings, innovation, improved production processes, or broader consumer benefits. Where such efficiencies are substantial and verifiable, they can weigh in favor of clearance, although they do not automatically override competitive concerns. The Competition Council's opinions often incorporate these considerations alongside the quantitative and qualitative assessment of competitive risks.

Decisions, Remedies, and Conditions

At the conclusion of the review, the Minister may approve the transaction unconditionally, approve it subject to conditions, or prohibit it. Conditional approvals often involve behavioral undertakings, such as commitments not to raise prices or restrict access to essential inputs, or structural remedies, such as divestiture of specific business units or assets to preserve competitive market structure.

The Competition Law provides broad discretion in determining appropriate remedies. For example, in past cases, authorities have required divestiture of production facilities, intellectual property licenses, or the transfer of distribution networks to competitors to maintain competition. Behavioral commitments are sometimes imposed when structural remedies are impractical or insufficient, and can include obligations to maintain open access to key services, refrain from exclusive contracts, or ensure transparency in pricing. In all cases, conditions are tailored to the transaction's specific competitive risks and market context.

Decisions must be reasoned and are intended to be published, although public access remains limited. Transparency gaps have been noted by international observers as a structural weakness of the Tunisian regime, particularly for complex or high-impact transactions.

Suspension Obligation and Prohibition of Early Implementation

Notification triggers a standstill obligation under Article 9, meaning that parties may not implement the transaction or take steps that would irreversibly alter market conditions before receiving clearance. Early implementation, while not explicitly termed "gun-jumping," constitutes a breach of the Competition Law and may expose parties to fines.

Enforcement in this area has historically been limited, and there is minimal precedent for sanctioning non-compliance. Nevertheless, prudent parties treat the standstill obligation as binding to mitigate legal and reputational risk.

Sector-Specific and Regional Considerations

Certain sectors are subject to special regulatory regimes that coexist with or partially displace general merger control rules. The banking sector, for example, is regulated by the Central Bank of Tunisia, which must approve acquisitions of significant shareholdings in banks or financial institutions. The insurance sector falls under the supervision of the Insurance and Pension Supervisory Authority, and telecommunications operators are regulated by the Tunisian Telecommunications Authority. In these sectors, merger approval often requires dual clearance: from the sectoral regulator and from the Minister responsible for competition, which may extend timelines and create additional compliance obligations.

Sanctions and Legal Consequences of Non-Compliance

Failure to notify a notifiable concentration or implementing a transaction in breach of the standstill obligation may trigger financial sanctions under Article 20, with fines up to 10 percent of the parties' turnover in Tunisia. In addition to fines, authorities have the power to impose corrective measures, which could include unwinding a completed transaction or imposing conditions retroactively. While such remedies have rarely been applied, their potential underscores the importance of compliance, particularly for transactions with significant market impact.

Tunisia's merger control regime is structured around a mandatory pre-merger notification system, designed to prevent anti-competitive concentrations before they occur. The legal framework under Law n° 2015-36 is clear and provides a basis for both substantive and procedural assessment. However, practical challenges remain, including limited transparency, the absence of formal merger guidelines, the broad discretion of the Minister, and potential overlap with sector-specific or regional regulatory requirements. For transactions with a nexus to Tunisia, early assessment and careful coordination with authorities are essential to mitigate regulatory and operational risks.

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